

/CTO/ 10/12/2011

I hereby certify that this correspondence is being filed via
facsimile with the United States Patent and Trademark Office
on October 5, 2011

KILPATRICK TOWNSEND & STOCKTON LLP

By: Wane B. Henry

PATENT
Attorney Docket No. 80718-612866
(016770-002721US)
Client Ref. No. 53381-US-CNT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Yehuda Ivri et al.

Application No.: 09/551,408

Filed: April 18, 2000

For: METHODS AND APPARATUS
FOR STORING CHEMICAL
COMPOUNDS IN A PORTABLE
INHALER

Confirmation No. 2446

Examiner: Clinton T. Ostrup

Technology Center/Art Unit: 3771

REPLY BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

Further to the Examiner's Answer mailed on August 17, 2011 for the above-referenced application, Appellants submit this Reply Brief in support of their appeal from the Final Rejection in this application.

ARGUMENT

Claim 40 stands rejected as being allegedly obvious over Ivri (WO 97/07896) in view of Robertson (US 5,487,378). Claims 41-43 stand rejected as being allegedly obvious over Ivri and Robertson, in further view of Abys (US 4,911,798). Appellants have explained in the Appeal Brief filed April 11, 2011 why the rejections should be reversed.

The Examiner's Answer repeats and maintains the rejections, and Appellants take this opportunity to address certain arguments presented in the Examiner's Answer.

Claim 40

Claim 40 recites in part

electroforming a vibratable aperture plate made of palladium or a palladium alloy....

Appellants respectfully reiterate that neither Ivri nor Robertson anywhere includes the word *palladium*, and thus the cited references, even in combination, do not disclose all of the limitations of claim 40.

The Examiner's Answer contends that taking into account the knowledge of one of ordinary skill in the art, the substitution of palladium or a palladium alloy for the nickel disclosed in Robertson "would be the simple substitution of one known element for another that are known to be used in electroplating and electroforming and are in the same group or family (the nickel family) in the periodic table." (Examiner's Answer p. 7) Appellants respectfully submit that this reasoning is speculative and based on hindsight reconstruction, and therefore does not properly support the rejection.

Claims 41-43

Claims 41-43 recite particular alloys for the aperture plate, specifically *palladium cobalt* (claim 41), *palladium nickel* (claim 42), and *about 80% palladium and about 20% nickel* (claim 43).

In support of the rejection of claims 41-43, the Examiner's Answer cites Abys as teaching that "palladium metal and alloys are used as protective coatings" and that "palladium-nickel and palladium-cobalt alloys are advantageous used in electroplating...." (Examiner's

Answer p. 5). The Examiner's Answer asserts that "it would have been obvious ... to have used palladium-nickel or palladium-cobalt alloys, as taught by Abys, in order to electroform the aperture plate, as taught by Robertson, with a dome shape having tapered apertures therethrough, as disclosed by Ivri, with a **protective layer**, using a well known palladium alloy for its art recognized purposes, which is to **provide a protective layer** using metal alloys...." (Examiner's Answer pp. 5-6, emphasis added).

Appellants have previously pointed out that even Abys does not disclose electroforming items entirely from palladium or palladium alloy, but only describes electroplating a thin layer of palladium or palladium alloy. In response, the Examiner's Answer argues that electroforming is an "electroplating process", and that "the electroformed material would have the same metal external surface as an electroplated material...." (Examiner's Answer p. 9).

However, Abys teaches against forming an entire part from palladium. A stated purpose of Abys is to provide a "less expensive" alternative to gold plating of electrical contacts. (Abys col. 1 line 25). Abys describes palladium and palladium alloys as "attractive" for this purpose (col. 1 line 37), but notes that "where low cost is highly important, various palladium alloys such as palladium-nickel and other palladium alloys are often preferred (col. 1 lines 48-50).

Thus, Abys seeks to minimize the use of the precious metal palladium, both by plating only thin layers, and by alloying the palladium with less expensive materials. The Examiner's Answer contends that Abys would have lead one of skill in the art to fabricate Robertson's aperture plate entirely from palladium or palladium alloy. However, this would be in direct contradiction to Abys' teaching to minimize cost by minimizing the consumption of palladium.

Because Abys teaches away from electroforming using palladium, Abys is not properly used in the rejection of Appellants' claims, and the Examiner's Answer has not presented a proper *prima facie* case obviousness with respect to claims 41-43.

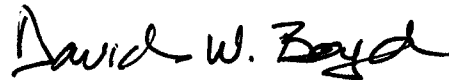
Yehuda Ivri et al.
Appl. No. 09/551,408
Appellants' Reply Brief dated October 5, 2011
Page 4

PATENT
Attorney Docket No. 80718-612866

CONCLUSION

Appellants respectfully maintain that the Rejection should be reversed, and the application remanded to the Examiner with directions to allow the application to pass to issue promptly.

Respectfully submitted,



David W. Boyd
Reg. No. 50,335

KILPATRICK TOWNSEND & CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 303-571-4321

63683187 v1